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IN THE

Supreme Court of the United States

October Term, ~~1952~~ 1953

No. ~~538~~ 13

POPE & TALBOT, INC.,
Petitioner,

v.

CHARLES HAWN

and

HAENN SHIP CEILING AND REFITTING CORPORATION.

BRIEF ON BEHALF OF HAENN SHIP CEILING AND REFITTING CORPORATION IN OPPOSITION TO THE PETITION FOR WRITS OF CERTIORARI.

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ARGUMENT.

I. The Judgment of the Respondent Hawn Should Not Be Reduced Because He Is Entitled to Compensation Benefits.

Three questions are presented by the Petition (Petition, pp. 6-7). In view of the fact that the petitioner does not challenge the reversal by the Court of Appeals of the judgment in its favor against Haenn Ship Ceiling and Refitting Corporation (hereinafter referred to as Haenn), the first and third questions presented by the petition do not concern the respondent Haenn and no argument is here presented in regard to those two questions.

This brief is addressed solely to the second question (Petition, p. 14) which raises the contention that the judgment of the respondent Hawn should be reduced in an amount equal to the benefits he is entitled to receive under the Longshoremen's and Harbor Workers' Compensation Act.

The basis of this contention is that because Haenn was negligent it should not enjoy its right of subrogation.

Although Hawn elected to sue the petitioner the respondent, Haenn, continued to pay compensation, as provided by the Act, under an agreement that Hawn would repay all sums paid for medical treatment and compensation out of any recovery made by him.

The petitioner contends that it is being required to pay for Haenn's fault as well as its own. This argument is not sound as the judgment only reflects full compensatory damages for Hawn, and the compensation payments are not included in the amount of such damages except to the extent of medical expenses amounting to $831.35 (Rp 202a, Rh 69). Had the respondent Haenn not paid any compensation it must be presumed that the compensatory damages awarded to Hawn would have been in the same amount. The fact that there was an agreement between Hawn and Haenn that the latter would continue to pay compensation notwithstanding the election to sue the petitioner is a circumstance which has had no effect on the petitioner's liability or the amount of damages awarded against it.

Without regard to the agreement between Hawn and Haenn, the latter is entitled to be subrogated to the extent of payments made under the Longshoremen's and Harbor Workers' Compensation Act even though that Act, in terms, does not specifically mention subrogation where the employer voluntarily pays in accordance with the spirit and requirements of the Act. (*The Etna*, 138 F. 2d 37, 40.)

If the petitioner's contention is upheld, it would result in an employer being deprived of his subrogation because he complied with the Act in making payments to his injured employee.

It is therefore clear that the respondent Haenn is not obtaining "indemnity" from the petitioner, who is doing nothing more than paying compensatory damages. It is legally no concern of the petitioner whether the respond-

ent Haenn, or some other thirty-party, by assignment, is to share in those damages. The petitioner is paying the price of its own fault which is not reduced or increased by reason of Haenn's subrogation interest in the judgment.

The petitioner here, by asking that Hawn's judgment be reduced, is attempting to obtain, in effect, a contribution from Haenn. The Court of Appeals said (Rh 69):

> "What appellant actually seeks under this point is to accomplish by indirection the exact same result repudiated in Halcyon Lines v. Haenn Ship Ceiling and Refitting Corp., 342 U. S. 282."

It is contended that it would be inequitable for the respondent Haenn, being negligent, to be fully reimbursed for all payments made by it under the Act. This argument loses sight of the fact that Haenn was obligated by law to make the payments without regard to its fault. This Court has held where the parties are situated as they are here that an employer covered by the Act is not obligated to contribute because it might be a joint tortfeasor, and that in the absence of statute it would be inappropriate to hold otherwise. *Halcyon Lines v. Haenn Ship Ceiling and Refitting Corporation*, 342 U. S. 286-287.

II. Conclusion.

It is therefore respectfully submitted that the petition should be denied.

Respectfully submitted,

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JOSEPH W. HENDERSON,
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